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Before The
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Service Rules for the 746-764 and 776-794)	WT Docket No. 99-168
MHz Bands, and Revisions to Part 27 of the)	
Commission's Rules)	
Auction of Licenses in the 747-762 and)	DA 00-43
777-792 MHz Bands Scheduled for)	Report No. AUC-99-31-A
May 10, 2000)	

REPLY COMMENTS OF BELL ATLANTIC MOBILE, INC.

Bell Atlantic Mobile, Inc. ("BAM"), hereby responds to the initial comments filed on January 24, 2000, on the Commission's Public Notice proposing rules for the upcoming auction of the 700 MHz bands. Public Notice, DA 00-43, Report No. AUC-99-31-A (Auction No. 31) (released January 10, 2000).

To ensure that the procedures governing Auction No. 31 are fair for all participants, the Commission should reject all "special procedures" designed to facilitate individualized business plans. The 700 MHz auction rules should be bidder neutral, that is, equally advantageous and disadvantageous to all potential bidding strategies. Just as every bid should carry the same weight in determining the high bidder, every bid withdrawal should carry the same impact and any applicable penalty. Adopting specialized penalties for some, but not all, business strategies would only distort the auction process by making it easier for some

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bidders to withdraw than others. To avoid skewing the auction, the Commission should not adopt any preferential rules for allowing some but not all bidders to withdraw on favorable terms. This principle should apply to bidders attempting to aggregate both nationwide and regional license blocks.

The Commission proposed that a “nationwide” bidder be entitled to a favorable bid withdrawal penalty in the event that its attempt to obtain a nationwide license block fails. Public Notice at 9-10. In exchange for declaring itself a nationwide bidder only, an auction participant could be subject to a bid withdrawal penalty calculated based on the sum of its withdrawn bids on regional licenses and the sum of the subsequent high bids for those licenses, and that “may result in a payment that is lower than a payment calculated on a license-by-license basis.” Id.

PSINet Inc. asks that the Commission take this preferential exit strategy one step further. First, it asserts that there should be no mandatory “all or nothing” nationwide bidding rule. Rather, an auction participant should be permitted to follow a nationwide and regional bidding strategy. Then, PSINet suggests that the Commission should apply “limited withdrawal penalties” to bidders seeking to aggregate the 20 MHz and 10 MHz licenses in the same region. Bidders who declare their intention at the outset to attempt to aggregate licenses (either regionally or nationally) would be able to pursue these multiple bidding strategies without being subject to the same bid withdrawal penalties as bidders who simply bid on a license-by-license basis.

PSI's modification to the special withdrawal rule, while understandably calculated to serve its particular strategy for winning 700 MHz licenses, illustrates the inherent flaw in any special rule. Its comments reveal why auction procedures should not be tailored to accommodate particular bidders, their bidding strategies or their underlying business plans. BAM urges that the Commission not only decline to adopt PSI's proposal, but also determine that it will not adopt any special rule for withdrawal penalties.

Companies with sufficient sophistication to participate in the Commission's auctions have sufficient sophistication to determine and evaluate the potential benefits and detriments to following one bidding strategy or another. Part of this calculus is the bid withdrawal penalty, which is plainly stated in the Commission's rules to apply to all bidders in an auction. If the Commission attempts to tailor the penalty to various bidding strategies, it will effectively conduct several different auctions at the same time, and hamper the ability of bidders to use the available information to plot their own strategy during the auction.¹

Making such distinctions among bidders based on their business plans is simply not necessary. As the Commission notes, in Auction 31, all bidders will have the opportunity to bid on all 12 available licenses. "Our current rules are designed

¹ See Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Second Report and Order, 9 FCC Rcd 2348, 2373 (1994) (insincere bidding can skew information available to auction participants).

to facilitate the aggregation of licenses, and we believe they are adequate to facilitate the aggregation of all the 10 MHz or all 20 MHz licenses or any subset thereof.” Public Notice at 9.

The Commission perceived a disincentive for bidders attempting to acquire all 12 licenses because of a potentially substantial bid withdrawal penalty for dropping out when they determine that they are unable to effectuate this strategy. Id. But “tipping” the auction rules to encourage any bidding strategy would set a dangerous precedent. Aside from the fact that it is not at all apparent why the Commission would want to encourage only one entity to buy up all of the valuable 700 MHz spectrum nationwide, the Commission’s auction rules and policies have always avoided procedures that favor particular bidders.

There are any number of different business plans and thus bidding strategies that interested parties may pursue. The auction rules should not play favorites by creating a variety of withdrawal procedures. In any event, a bidder which adopts a nationwide bidding strategy should have sufficient funding to pay the standard bid withdrawal penalty. That is simply the risk of entering the auction with the intent to pay the value placed on the spectrum by the participants.

The purpose of the bid withdrawal penalty is not to facilitate some bidders over others in an auction where there are “divergent business plans.” Rather, the purpose of the bid withdrawal penalty is to discourage insincere bids and to discourage bidders who do not have sufficient financial backing to elevate their bids. To modify the bid withdrawal penalty to encourage certain bidders is contrary to

the purpose of the rule and unfair to bidders who would rather not announce their bidding strategies before the auction. Indeed, the Commission specifically considered the impact on combinatorial bidding at the time it decided what would be a fair bid withdrawal penalty. It adopted the current rule because it “generally provides an appropriate balance between the risks of too high a penalty and those of too low a penalty.”² The Public Notice offers no reason why this thorough analysis of the precise issue has become obsolete for Auction 31. The Commission should not change its long-standing auction procedures in this way, for PSINet, for other nationwide bidders, or for anyone else.³

Accordingly, BAM urges the Commission not to adopt any “special procedures” modifying the bid withdrawal penalty for individualized bidding strategies in Auction 31.⁴

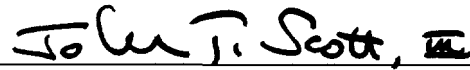
² See Implementation of Section 309(j) of the Communications Act—Competitive Bidding (Second Report and Order), 9 FCC Rcd at 2373-74.

³ As PSINet’s comments demonstrate, changing the underlying rationale for the bid withdrawal penalty would only encourage potential bidders and withdrawing bidders to seek waivers of the penalty when they decide that they do not like the risks associated with bidding. That result is contrary to consistent application of the rules and administrative rulemaking, and should be avoided.

⁴ If the Commission nonetheless decides to adopt a special withdrawal penalty rule for nationwide bidders, it is essential that it prohibit any such bidder from having any affiliation or bidding arrangement with any other bidder which is pursuing a regional or individual market bidding strategy. Otherwise, a company could take advantage of the special rule but still be able to win individual licenses through its affiliate, thereby distorting the auction.

Respectfully submitted,

BELL ATLANTIC MOBILE, INC.

A handwritten signature in black ink, reading "John T. Scott, III". The signature is written in a cursive style with a horizontal line underneath.

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